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Written statement* submitted by the Amuta for NGO Responsibility, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Investigation of the appointment of William Schabas and the conduct of the 2014 Gaza Commission of Inquiry

In February 2015, William Schabas resigned from the UN Human Rights Council's Commission of Inquiry on the 2014 Gaza Conflict (COI), after the revelation that he had failed to disclose his work as a paid consultant for the PLO in applying for a previous position. Given Mr. Schabas' long-standing record of animosity towards Israel and his history of Palestinian activism, the central question is how this violation of ethical principles happened in the first place.

This scandal highlights the importance of an independent investigation into the biased appointment process. In particular, the investigation should include questions such as:

- What other conflicts of interest and ethical violations were hidden by Schabas?
- What connections and consultancies did Schabas have with politicized NGOs such as Amnesty International, Al Haq, etc. and what role have these NGOs played to date in the COI?
- How did the UN's vetting process fail? According to news reports, Schabas "was not asked to detail his consultancy work when he was appointed."
- If UN officials were previously aware of Schabas' connections to the PLO, why was this information not disclosed earlier and why was he allowed to continue in his position?
- Who in the HRC leadership and/or at the Office of the High Commissioner for Human Rights selected Schabas for the position?
- To what extent was the PLO, the Arab League, and/or the Organization of Islamic Cooperation involved in the selection of the commission members?

In addition to an investigation on the details surrounding Schabas' appointment, the UN must conduct a complete overhaul of the process related to appointments for HRC commissions of inquiry – particularly those related to Israel. Unlike appointments for thematic mandates, the process for HRC commissions of inquiry is completely secretive and violates ethical and legal standards. There are no set procedures and no publicly available guidelines. It is unknown how candidates are selected, who influences the process, and who ultimately chooses commission members.

The HRC Guidelines require all work carried out under the Council's auspices to be conducted with "impartiality, objectivity, and non-selectivity". Yet, these guidelines are routinely violated in the HRC appointment processes, and should be a source of shame and embarrassment for the HRC and the staff of the OHCHR that support and enable these double standards. As noted by legal scholar and former member of the Inter-American Commission on Human Rights, Christina Cerna:

> In my view Israel has a unique status in the UN Human Rights Council. Impartiality is not a requirement sought by the Council for the appointment of experts when it comes to Israel. I was selected as the consensus candidate of the Consultative Committee for the post of UN Special Rapporteur on the Occupied Palestinian Territories earlier this year, but the Organization of Islamic Cooperation and the League of Arab States both officially opposed me, which killed my candidacy. They opposed me for "lack of expertise," although my entire professional life has been involved with human rights, but because I had never said anything pro- Palestinian and consequently was not known to be "partial" enough to win their support. The candidate that they officially supported was considered to be partial in their favor. No other special procedures mandate is similarly biased. At the end of the day, neither I nor the OIC candidate was appointed, but the Indonesian diplomat,

> Makarim Wibisono, who was appointed, was considered sufficiently "pro-Palestinian" to be acceptable to the OIC. Consequently, I don't think Bill Schabas could have been selected to lead the "independent" inquiry if he hadn't made the comments he had made about Netanyahu. (*EJIL Talk!* 4 November 2014)

The lack of transparency at the HRC has not only marred the appointment process for the COI, but runs through the entire COI investigation. For instance, the COI has failed to disclose the identities of the many staff members and consultants working on the investigation and report. These include the Coordinator, Reporting Officer, Legal Advisor, Investigation Team Leader, two Human Rights Investigators, the Child Protection Advisor, Gender Advisor, Forensic Pathologist, Administrative assistant, Archivist, Local Security Officer, Military Advisor consultant, Media expert consultant, and two media monitoring consultants. (Similar secrecy characterized the discredited UNHRC Goldstone report of 2009.)

The secrecy surrounding the COI staffing is unethical and makes it impossible to evaluate the competency, qualifications, biases and expertise of these individuals. It is also impossible to know how many of these individuals have significant conflicts of interest like Schabas. Given past experience, notably with the 2009 Goldstone mission, these conflicts are likely to be numerous and severe.

The COI has also failed to provide a list of witnesses or disclose its process for selecting witnesses. No testimony has been made public, nor has a list of meetings been issued. Submissions received by the COI have also remained secret. Again, this lack of transparency is in violation of accepted fact-finding standards.

Another serious concern regarding the COI that requires immediate investigation relates to statements made by Mr. Schabas in his letter of resignation. He claimed that the "Commission of Inquiry is at a decisive stage in its work. It has largely completed the task of gathering material and listening to victims and other witnesses, including experts. The work on the drafting of the report is beginning." In other words, the fact-finding work of the COI had been completed under the direction of Schabas, and his comments highlight his integral involvement in the substantive work of the COI, and in directing and shaping the investigation. Any resulting report issued is therefore irrevocably tainted by his involvement and cannot be viewed as being objective, impartial, or non-selective.

From a broader perspective, Schabas comments highlight the troubling questions on the professionalism and credibility of the COI's activities. The deadline for submissions to the COI was 31 January 2015 (since extended to 16 February). Schabas' comments indicate, however, that the COI's work as of 1 February had already been completed. It is therefore impossible for the COI to have reviewed and investigated the information in the submissions, and it appears then that there was no real attempt by the COI to take the submissions into account. We are also aware that the COI wanted to interview witnesses as late as 26 February.

Finally, the excessive cost of the COI calls into question the HRC's commitment to universality and non-selectivity. According to the UN Programme Planning and Budget Division, the Mission would require a staggering $2,359,800 appropriation, including $566,900 for "simultaneous interpretation" and "pre-session documentation"; $1,125,300 for staffing, plus an additional $124,200 for unnamed "consultants," including a "media expert consultant" and "two media monitoring consultants"; $273,000 for commission and staff travel; and $18,000 for office equipment and supplies. There is no explanation as to why the proposed salaries are so grossly excessive, or why such large amounts are needed for "simultaneous interpretation" and travel. There is no explanation as to why the COI needs its own special "media expert" and why the currently available and extensive PR resources at the UN are insufficient.

The UN projected a budget of nearly $3 million for this tainted investigation is entirely disproportionate and unjustifiable. There are numerous serious and horrifying human rights crises globally, including in Syria, Iraq, Nigeria,

Afghanistan, the Ukraine, Iran, Saudi Arabia, China, Turkey, Cuba, and Venezuela, and even William Schabas admitted that events in Gaza are "probably not, on a Richter scale of atrocity, at the top."

Unfortunately, the HRC track record on COIs related to Israel has been dismal. It is clear these efforts have been "employed not to discover evidence of real probity, but to ... re-enforce predetermined political conclusions" to be used for "propaganda purposes."[1] As detailed above, the current COI has not shed this tarnished image. Its work should be immediately suspended and the UN should launch an investigation on these core issues of fairness and justice. The HRC also must overhaul its fact-finding mechanisms and immediately enact clear standards and guidelines for future commissions of inquiry. If the COI on Gaza is to be reconvened it should done so under a fully transparent, non-corrupt, and reformed process.

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[1] Franck, Thomas M. and H. Scott Fairley, Procedural Due Process in Human Rights Fact-Finding by International Tribunals, 74 AM. J. INT'L L. 308 (1980).